

CANADA / JUDGMENT

R. v. F.(K.)

2007 BCSC 101

COURT

Supreme Court of British Columbia

DECIDED

19 January 2007

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2007 BCSC 101 R. v. F.(K.) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. F.(K.), 2007 BCSC 101 Date: 20070119 Docket: 23965 Registry: Vancouver Regina v. K.F. Before: The Honourable Mr. Justice Slade Oral Ruling re Expert Opinion Evidence January 19, 2007 Counsel for the Crown: L. Gauld Counsel for the Accused: K. Bastow Place of Hearing: Vancouver

- [1] The trial of this matter commenced before a jury on January 15, 2007.
- [2] On January 16, 2007, defence counsel gave informal notice to the Crown of her intention to call expert opinion evidence. The subject matter of the proposed evidence goes to the question whether the accused was in a state of cocaine intoxication at the time of the commission of the acts alleged to constitute the offences. The primary offences charged are breaking and entering a dwelling place, and there committing the indictable offences of sexual assault and robbery.
- [3] Evidence was adduced at the preliminary inquiry conducted in July 2006, and at trial during the presentation of the case for the Crown, of the use of cocaine by the accused in the course of the commission of the offences.
- [4] On January 17, 2007, defence counsel provided the Crown with the curriculum vitae and a copy of the report of the proposed witness. The report is dated January 8, 2007.
- [5] On January 18, 2007, defence counsel provided the Crown with further particulars of the qualifications of the proposed witness, and set out the areas in which the defence will seek to qualify her to give expert opinion evidence. The notice states: I wish to have Dr. Zoffman qualified as a "Forensic Psychiatrist, medical doctor" and "as an expert in the formation of intent, the impact of intoxication by drugs or alcohol on the formation of intent and the general effects and duration of intoxication by drugs or alcohol." Defence counsel stated, in submissions, that she also intends to qualify the proposed witness to give expert opinion evidence on "mental state".
- [6] In further submissions, defence counsel advised the court of her intention to seek to adduce evidence from the proposed witness that is not confined to the opinion set out in the report dated January 8, 2007.

- [7] The case for the Crown is closed.
- [8] Section 657.3(3) of the Criminal Code provides:
- (3) For the purpose of promoting the fair, orderly and efficient presentation of the testimony of witnesses,
- (a) a party who intends to call a person as an expert witness shall, at least thirty days before the commencement of the trial or within any other period fixed by the justice or judge, give notice to the other party or parties of his or her intention to do so, accompanied by
- (i) the name of the proposed witness, (ii) a description of the area of expertise of the proposed witness that is sufficient to permit the other parties to inform themselves about that area of expertise, and (iii) a statement of the qualifications of the proposed witness as an expert;
- (b) in addition to complying with paragraph (a), a prosecutor who intends to call a person as an expert witness shall, within a reasonable period before trial, provide to the other party or parties
- (i) a copy of the report, if any, prepared by the proposed witness for the case, and (ii) if no report is prepared, a summary of the opinion anticipated to be given by the proposed witness and the grounds on which it is based; and
- (c) in addition to complying with paragraph (a), an accused, or his or her counsel, who intends to call a person as an expert witness shall, not later than the close of the case for the prosecution, provide to the other party or parties the material referred to in paragraph (b).
- [9] The defence has failed to comply with the notice requirements of s. 657.3(3). Her stated intention to adduce evidence that is not confined to the opinion set out in the report dated January 8, 2007 would, if acted on, be non-compliant with subsection (c).
- [10] The proposed witness is available to testify on January 23, 2007.
- [11] I order, pursuant to s. 657.3(5)(b) that the defence provide further particulars of the proposed evidence of Dr. Zoffman. In particular, the defence will provide particulars of any opinion proposed to be given in evidence of:
1. The effect of drugs and alcohol on the formation of intent.
 2. The general effects of intoxication by drugs or alcohol.
 3. The duration of intoxication by drugs or alcohol.
 4. The effect of intoxication by drugs or alcohol on mental state.
 5. Any other opinion sought to be adduced.
- [12] These particulars shall be provided to the Crown, in writing, not later than 12:00 noon on January 22, 2007. "H.A. Slade J." The Honourable Mr. Justice H.A. Slade

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